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ABSTRACT

This document presents survey questions concerning rights of students with disabilities in postsecondary education and the responsibilities and rights of faculty and staff. The survey is intended to provide necessary information about disability laws and recent legal decisions to faculty and staff in the context of increasing enrollment of postsecondary students with disabilities and the increasing demands of these students on faculty to provide accommodations. The 26-item survey identifies the correct responses (from yes/no choices), provides a rationale for each correct response, and offers one or more references. The survey addresses: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act; suitable accommodations and limitations on required accommodations; testing accommodations; liability of the individual faculty member; faculty responsibility and academic freedom; grievance procedures; and specific accommodations for individuals with mobility impairments, visual impairments, and learning disabilities. (Contains 16 references.) (DB)

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ED 395 422

Postsecondary Accommodations for Academic and Career Success

PAACS

Faculty and Staff Survey of Knowledge of Disability Laws and Recent Legal Decisions

- Faculty and staff need to be informed about disability laws and recent legal decisions that impact postsecondary education.
- More than 800,000 students with disabilities are currently enrolled in higher education nationwide.
- Section 504 of the Rehabilitation Act and the Americans With Disabilities Act (ADA) require institutions of higher learning to make accommodations and modifications of policy to insure these students with disabilities the right to an equal educational opportunity.
- Recent legal decisions have further defined the impact of disability laws on postsecondary education.
- Since the passage of the ADA, students with disabilities are making more demands on faculty to provide accommodations.
- The number of grievances on disability issues in higher education filed with the Office of Civil Rights (OCR) has increased.

This newsletter is designed to provide faculty and staff with referenced answers to questions about their rights and the rights of students with disabilities in postsecondary education. The correct responses to the survey items are checked.

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	Yes	No
1. Section 504 of the 1973 Rehabilitation Act and the Americans With Disabilities Act (ADA) prohibit discrimination on the basis of disability in any program or activity offered by an institution of higher education.	☑	☐

The Rehabilitation Act (1973), Section 504, Subpart E - Postsecondary Education, states that qualified persons with disabilities may not be denied, on the basis of their disability, access to any program or activity offered by an institution of higher education that receives federal financial assistance. The Americans With Disabilities Act (ADA) (1990), Title III extended this mandate to include private institutions. With the accessibility of postsecondary education programs, more than 800,000 students with disabilities were reported to be enrolled in higher education institutions in the 1992-1993 academic year ("Facts In Brief", 1995).

2. A person is considered to be a person with a disability if he/she has the disability, has a record of the disability, or is regarded as having the disability.	☑	☐

Under ADA and Section 504 of the Rehabilitation Act "an individual with a disability" is a person who: (1) has a physical or mental impairment which substantially limits a major life activity; (2) has a record or history of such an impairment; or (3) is regarded as having such an impairment (Equal Employment Opportunity Commission, 1991).

3. A qualified person with a disability meets the academic and technical standards required for admission or participation in a particular program or activity.	☑	☐

The Federal Register, Title 34 (as cited in Frank & Wade, 1993) defines a qualified person with a disability as one who meets the technical and academic standards for entry into school. Therefore, a student with a disability must meet all of the academic and nonacademic criteria for admission and continued enrollment in a school program. The courts interpretation of Section 504 does not require a school to lower its standards. It does require schools to provide reasonable accommodations that afford an equal opportunity for students with disabilities.

	Yes	No
4. Faculty and staff in higher education are required to provide a student with a disability accommodation even if the student does not request it.	☐	☑
The student has the responsibility to self-identify to the designated compliance officer or disability services office, provide documentation of a disability and ask for accommodation before the institution is required to provide that accommodation. In the case of Salvador v. Bell the Office of Civil Rights (OCR) ruled in favor of Roosevelt University because the student had not self-identified and requested the necessary accommodation (Jarrow, 1991).		
5. Section 504 specifically mentions tape recording lectures as a means of assuring full participation in the classroom for students with disabilities.	☑	☐
Section 504, Subpart E of the Rehabilitation Act (1973), states specifically that a postsecondary institution may not impose rules that prohibit the use of tape recorders in the classroom for students with disabilities.		
6. A student with a disability may ask for and expect accommodation in a classroom even though the student has not provided documentation that the disability exists.	☐	☑
A student is required to provide the designated compliance officer or disability services office with the necessary documentation from an appropriate expert that the disability exists before any classroom accommodation need be provided. This documentation must be current (within the last 3 years). In Salvador v. Bell, the OCR ruled that the institution was under no obligation to provide accommodation for a student with a disability who fails to provide documentation of the disability (Jarrow, 1991).		

	Yes	No
7. Students are required to assume the responsibility for securing a necessary accommodation.	☐	☑

The institution is required to provide reasonable accommodations for a student's known disability so that the student has an equal opportunity to participate in the school's courses, programs or activities (Kincaid & Simon, 1994). The designated compliance officer or disability services office may provide the accommodation or the instructor; but, ultimately it is the responsibility of the university. In the case of Mitchell College, CT (Kincaid, 1995, May) the court ruled that a college/ university may not charge students for necessary accommodations.

8. A classroom's location should be changed to provide accessibility for a student with a mobility disability.	☑	☐

Section 504 of the Rehabilitation Act (1973) mandates that programs be accessible to students with disabilities. The institution does not need to make every classroom accessible but must allow the participation of students with disabilities when "viewed in its entirety." Therefore, the institution may choose to move a class to an accessible location without making every campus building accessible (West et al., 1993).

9. An instructor who decides that a student with a documented learning disability does not need extended time on a test may choose not to give this accommodation.	☐	☑

Extended time is a reasonable accommodation for a student with a disability whose documentation specifically calls for that accommodation. The institution is required to ensure that the student is provided additional time to complete tests and/or course work in order to provide an equal opportunity for that student. In Dinsmore v. University of California at Berkeley, the OCR ruled that the institution must insure that no single faculty member could deny extended time to a student with a documented need for this accommodation (Jarrow, 1992).

	Yes	No
10. The form of an exam must be altered if the testing procedure puts a student with a disability at a disadvantage based on the student's documented disability.	☑	☐
Section 504 and the ADA call for modification of evaluation methods so that the assessment does not discriminate against a student with a sensory, manual or speaking impairment based on that student's disability. There may be an exception when the purpose of the test is to measure such skills (Jarrow, 1991).		
11. A student with a speech disorder must be given an alternate assignment to presenting an oral report.	☑	☐
Under Section 504 of the Rehabilitation Act (1973), the institution must operate its programs in such a way that students with disabilities are not excluded on the basis of their disability. The institution must make modifications to academic requirements to ensure that they do not have the effect of discriminating against a student solely on the basis of disability.		
12. Student requests for accommodation must be provided even when the accommodation would result in a fundamental alteration of the program.	☐	☑
Academic requirements that the institution can show are essential to the student's course of study do not have to be modified/accommodated. In other words, the institution would not have to change a requirement if it could demonstrate that such change would fundamentally alter the nature of the course. The Ohio Civil Rights Commission upheld Case Western Reserve University's refusal to accommodate a student because such accommodation would "unduly burden the school and require it to modify the essential nature of its program" (Kincaid, 1995, May). The case relied on federal law (Southeastern Community College v. Davis, 1979) in its decision that the student was not otherwise qualified with or without accommodation.		

	Yes	No
13. The university may refuse to grant a student's request for an accommodation which is not specifically recommended in the student's documentation.	☑	☐

In the case of Cumberland Community College, NJ, the OCR upheld a college's refusal to grant a student's request for an accommodation which was not specifically recommended in the student's documentation (Kincaid, 1995, September).

14. If a student with a visual disability is enrolled in a class, the instructor must provide all handouts in the alternate format requested by the student.	☑	☐

In the case of Los Rios Community College, CA, the OCR stated that postsecondary institutions should be prepared to make printed materials available in a reasonable and timely manner to students with visual impairments in all three mediums: auditory, tactile (Braille) and enlarged print. The institution may not refuse to provide access through a particular medium such as Braille. In addition, examinations and handouts must be made available to students on the same day they are distributed to nondisabled students (Kincaid, 1994, September).

15. The instructor must make course material on reserve in the library available in alternate formats for students with visual disabilities enrolled in the course.	☑	☐

In the Los Rios Community College, CA case, the OCR provided further interpretation of the requirements contained in Title II of the ADA (1990). OCR held that printed materials are communications and that postsecondary institutions must make such materials available to students with visual impairments in alternate format (Kincaid, 1994, September).

	Yes	No
16. If a student with a disability has difficulty writing, the instructor is responsible for providing the student with an oral test.	☑	☐

The Rehabilitation Act, (1973) Section 504 lists accommodations to testing to include readers, scribes, separate proctored settings and the use of adaptive equipment. Although the disability services office may provide these accommodations, the instructor and then the university is ultimately responsible to see that the student has necessary accommodation.

17. Faculty members have the right to access diagnostic information regarding a student's disability.	☐	☑

Faculty do not have the right to access the students' diagnostic information (Jarrow, 1991). The Department of Education follows the rules of confidentiality that are described in Section 503 of the Rehabilitation Act (1973). A number of court cases as well as OCR findings have further defined Section 503 as the standard for compliance. According to the rules of confidentiality, faculty members need only know the accommodations that are necessary to guarantee an equal opportunity for the student.

18. If a student's documentation specifically recommends a quiet testing area with no distractions, the instructor must allow the student to take an exam in a room different from the classroom with a proctor.	☑	☐

The Rehabilitation Act (1973) Section 504 specifically calls for the accommodation in testing of a separate proctored setting if the student's documentation specifically recommends this. This mandate was tested in the case of Weintraub v. Board of Bar Examiners and separate private room accommodation for testing was upheld (Latham, 1995).

	Yes	No
19. An individual faculty member who fails to provide an accommodation to a student with a documented disability may be held personally liable.	☑	☐

In the case of Dinsmore v. University of California at Berkeley, a professor refused to allow extended time on math tests to a student with a learning disability whose documentation specified the need for that accommodation. The professor maintained that giving the student extended time provided an unfair advantage. The Office for Disability Services and the university's administrators supported the student's request. However, the professor still refused to allow the accommodation. The OCR found the institution violated Section 504 and ordered the university to establish necessary procedures to ensure that no student would be denied accommodation for equal access. OCR held the institution responsible. The student filed a civil suit against the professor for abridgement of civil rights and the court accepted the case. The case was settled out of court for an unspecified amount. This case signaled that a faculty member could be held liable if his/her behavior denied a student necessary accommodation (Jarrow, 1992).

According to Section 504 of the Rehabilitation Act (1973), students could only file a compliant with federal agencies to investigate a charge of discrimination. Under the Americans With Disabilities Act (1990) students may sue the institution if they believe they have been denied their right to equal access (Jaschik, 1993).

20. The instructor's academic freedom permits the instructor to decide if he/she will provide special aids and services for students with disabilities in the classroom.	☐	☑

The individual faculty member's academic freedom cannot supersede the rights of a student with a disability for the provisions of documented accommodations (Jarrow 1991).

	Yes	No
21. Faculty must restructure the presentation of their courses and their course requirements if a student with a disability requests it.	☐	☑

An institution would be able to sustain the argument that such a request would "fundamentally alter the nature of the course" and present an undue burden on the school. Therefore, the faculty member and the institution would not have to comply with such a request. In the case of Mt. San Antonio College, CA, the OCR ruled in favor of the school's decision not to accommodate a student because the requested accommodation would result in fundamentally altering the nature of the course (Kincaid, 1995, May).

22. Asking to copy the notes of other class students is a reasonable accommodation for a student with a learning disability who finds note taking distracting from his/her ability to listen to the class lecture.	☑	☐

The Rehabilitation Act (1973) and Title II of the ADA (1990) mandate equal access and accommodation such as a note taker at no cost to the student. If such accommodation can be made by accessing another student's notes and/or tape recording the lecture, this may be an acceptable accommodation and avoid additional cost.

23. A student with a documented disability in math processing may use a standard four function calculator on a math test.	☑	☐

No specific OCR rulings have been made at this time. However, existing policy/practice would indicate that a standard four function calculator is a reasonable accommodation for a student with a disability in the area of math processing (J. E. Jarrow, personal communication, April 2, 1996).

	Yes	No
24. Nothing within the ADA or Section 504 requires a college to waive essential course requirements, however a refusal to grant a waiver must be justified.	☑	☐

Several legal decisions have reinforced the fact that an institution does not have to waive a course requirement or any other academic requirements if the college can show that such requirements are essential to the academic program. In the case of Indiana University Northwest, IN, OCR agreed with the university's decision not to waive a foreign language for a student with a learning disability because it was an essential requirements of the degree. The university had offered extended time, permission to enroll in a correspondence course, and the provision of a tutor (Kincaid & Simon, 1994).

25. Accommodations for testing such as readers, scribes, or the use of adaptive equipment must be provided for a student with a documented disability.	☑	☐

The Rehabilitation Act (1973) specifically mentions the above accommodations for a student with a documented disability that calls for such accommodation.

26. An institution of higher education must follow a grievance procedure that includes a grade change if appropriate disability-related accommodations were not provided.	☑	☐

The OCR ruled that Solano Community College violated a student's rights when a grade did not reflect the student's skills because no reasonable accommodations were provided. The school had to establish a grievance procedure that included a grade change if warranted (Kincaid, 1996, January).

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Faculty and Staff Survey of Knowledge of Disability Laws and Recent Legal Decisions

Please respond to the following statements by checking either Yes, No, or Don't Know.

	Yes	No	Don't Know
1. Section 504 of the 1973 Rehabilitation Act and the Americans With Disabilities Act (ADA) prohibit discrimination on the basis of disability in any program or activity offered by an institution of higher education.	☐	☐	☐
2. A person is considered to be a person with a disability if he/she has the disability, has a record of the disability, or is regarded as having the disability.	☐	☐	☐
3. A qualified person with a disability meets the academic and technical standards required for admission or participation in a particular program or activity.	☐	☐	☐
4. Faculty and staff in higher education are required to provide a student with a disability accommodation even if the student does not request it.	☐	☐	☐
5. Section 504 specifically mentions tape recording lectures as a means of assuring full participation in the classroom for students with disabilities.	☐	☐	☐
6. A student with a disability may ask for and expect accommodation in a classroom even though the student has not provided documentation that the disability exists.	☐	☐	☐
7. Students are required to assume the responsibility for securing a necessary accommodation.	☐	☐	☐
8. A classroom's location should be changed to provide accessibility for a student with a mobility disability.	☐	☐	☐
9. An instructor who decides that a student with a documented learning disability does not need extended time on a test may choose not to give this accommodation.	☐	☐	☐
10. The form of an exam must be altered if the testing procedure puts a student with a disability at a disadvantage based on the student's documented disability.	☐	☐	☐

	Yes	No	Don't Know
11. A student with a speech disorder must be given an alternate assignment to presenting an oral report.	☐	☐	☐
12. Student requests for accommodation must be provided even when the accommodation would result in a fundamental alteration of the program.	☐	☐	☐
13. The university may refuse to grant a student's request for an accommodation which is not specifically recommended in the student's documentation.	☐	☐	☐
14. If a student with a visual disability is enrolled in a class, the instructor must provide all handouts in the alternate format requested by the student.	☐	☐	☐
15. The instructor must make course material on reserve in the library available in alternate format for students with visual disabilities enrolled in the course.	☐	☐	☐
16. If a student with a disability has difficulty writing, the instructor is responsible for providing the student with an oral test.	☐	☐	☐
17. Faculty members have the right to access diagnostic information regarding a student's disability.	☐	☐	☐
18. If a student's documentation specifically recommends a quiet testing area with no distractions, the instructor must allow the student to take an exam in a room different from the classroom with a proctor.	☐	☐	☐
19. An individual faculty member who fails to provide an accommodation to a student with a documented disability may be held personally liable.	☐	☐	☐
20. The instructor's academic freedom permits the instructor to decide if he/she will provide special aids and services for students with disabilities in the classroom.	☐	☐	☐
21. Faculty must restructure the presentation of their courses and their course requirements if a student with a disability requests it.	☐	☐	☐
22. Asking to copy the notes of other class students is a reasonable accommodation for a student with a learning disability who finds note taking distracting from his/her ability to listen to the class lecture.	☐	☐	☐

	Yes	No	Don't Know
23. A student with a documented disability in math processing may use a standard four function calculator on a math test.	☐	☐	☐
24. Nothing within the ADA or Section 504 requires a college to waive essential course requirements; however, a refusal to grant a waiver must be justified.	☐	☐	☐
25. Accommodations for testing such as readers, scribes, or the use of adaptive equipment must be provided for a student with a documented disability.	☐	☐	☐
26. An institution of higher education must utilize a grievance procedure that includes a grade change if appropriate disability-related accommodations were not provided.	☐	☐	☐

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